IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 8619 of 2001

Between:

Smt. M.V.Lakshmi W/o. Ranga Rao
R/o. D.No.44-23-19, Railway New Colony, Visakhapatnam

..... PETITIONER

AND

The Commissioner
Visakhapatnam Municipal Corporation

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to declare the action of the respondent in directing the petitioner to part with her property free of cost to accord permission for construction as per the building plan submitted by the petitioner is arbitrary, illegal and violative of Article14, 21 and 33A of the Constitution of India consequently issue a writ order or direction more particularly one in the nature of the Writ of mandamus directing the first respondent to accord permission for construction as per the building plan submitted by the petitioner on the premises bearing Door No:44.23.19, Railway New Colony, Visakhapatnam.

Counsel for the Petitioner:MR.G.RAMA GOPAL

Counsel for the Respondent: MR.T.S.VENKATA RAMANA

The Court made the following :

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ORDER:

Heard the learned counsel for the petitioner and the learned counsel appearing for the respondent-Corporation.

The petitioner claims to be the owner of the premises bearing door No.44-23-19, situated at Dondaparthi, Railway New Colony, Visakhapatnam, having purchased the same under registered sale deed dated 10-12-1996. It is stated that she wanted to construct first floor on the existing building and therefore, submitted a building plan on 01-01-1997 requesting for approval of the first respondent. It appears that the said building plan was returned vide endorsement dated 21-1-1997 raising certain objections. The petitioner resubmitted the plan complying with the objections raised by the first respondent. However, the same was kept pending for a long time and in pursuance of several representations made by the petitioner, ultimately the respondent passed an order dated 09-02-2001 informing the petitioner that the permission for construction of the first floor shall be considered as per the Building Approval Rules subject to furnishing an undertaking to the effect that she should leave the site covered by drain free of cost. Aggrieved by the said action of the respondent in demanding to part with the land of the petitioner free of cost, this writ petition is filed.

On behalf of the respondent-Corporation, a counter-affidavit has been filed stating that on inspection of the premises where the house of the petitioner is situated, it was found that there is a drain, which on the northern side of her house and the petitioner constructed a wall across the natural drain, due to which, the drain water entered into the neighboring premises and the people of the locality made a complaint to the respondent-Corporation and requested to take immediate action. In

the circumstances, the compound wall constructed across the natural drain was removed departmentally on 11-08-2000. It is also stated that though there is vacant site on the rear side to raise the wall, the petitioner with a malafide intention to encroach upon the natural drain sought permission, which cannot be permitted since it is very old natural drain.

On the basis of the said counter-affidavit, the learned counsel appearing for the respondent submits that the impugned order has been rightly passed by the respondent-Corporation and the same does not warrant any interference.

However, the learned counsel for the petitioner while producing the building permission granted by the Corporation on 01-05-2004 in favour of some of the neighbours, who are similarly situated, states that the version of Corporation as stated in the counter-affidavit is not correct.

On a perusal of the permission grated on 01-05-2004 it appears that the Corporation has not insisted on leaving the site covered by the open drain free of cost. The learned counsel for the petitioner states that the petitioner is also similarly situated. In the circumstances, without expressing any opinion as to the rival claims made by the parties, I deem it appropriate to dispose of writ petition with a direction to the respondent to reconsider the request of the petitioner for approval of the building plan keeping in view the permission already granted to some of the neighbours, if they are similarly situated, and to pass appropriate orders in accordance with law as expeditiously as possible, preferably within a period of four weeks from the date of receipt of a copy of this order.

Accordingly, the Writ Petition is disposed of. No costs.

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29-12-2004

To

1. The Commissioner, Municipal Corporation, Visakhapatnam.
2. Two C.D. copies.

sj